

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Federal-State Joint Board on)
 Universal Service)

CC Docket No. 96-45

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COMMENTS OF
VANGUARD CELLULAR SYSTEMS, INC. **FEDERAL COMMUNICATIONS COMMISSION**
OFFICE OF SECRETARY

I. Introduction

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits these comments in response to the Joint Board's Universal Service Recommendations released on November 8, 1996 and noticed by the Federal Communications Commission (the "Commission") on November 18, 1996.^{1/} Vanguard participated in the Joint Board deliberations through the submission of comments and makes this filing to ensure that the Commission's rules meet Congress' universal service goals and are applied in a competitively neutral manner.^{2/} Vanguard urges the Commission to adopt rules that ensure meaningful consumer choice among services and service providers, that will encourage more efficient, lower cost service, and that do not prevent wireless carriers from benefiting from federal universal support mechanisms.

^{1/} See *Public Notice*, "Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision," DA 96-1891 (rel. November 18, 1996); *Order*, CC Docket No. 96-45 (rel. December 11, 1996) (extending comment date to December 19, 1996); *Recommended Decision*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. November 8, 1996) ("*Recommended Decision*").

^{2/} See *Comments of Vanguard Cellular Systems, Inc.*, CC Docket No. 96-45 (filed April 12, 1996); *Reply Comments of Vanguard Cellular Systems, Inc.*, CC Docket No. 96-45 (filed May 8, 1996); see also *Comments of Vanguard Cellular Systems, Inc.*, CC Docket No. 96-45 (filed August 2, 1996).

II. The Commission's Rules Should Support the Participation of Wireless Providers and Other New Entrants in the Provision of Universal Service.

Vanguard is a long-time provider of cellular service, and currently serves approximately 500,000 customers. Its cellular systems provide service in 29 markets in the eastern half of the United States and cover a geographic area containing more than 7.8 million people.

Accordingly, Vanguard has the geographic coverage and technical capability to contribute directly to the achievement of Congress' universal service objectives. Vanguard can do so, however, only if the Commission's rules ensure that wireless providers are eligible for universal service support if they provide supported services to qualifying customers.

Vanguard supports the Joint Board's recommendation to establish "competitive neutrality" as an additional principle upon which the Commission should base universal service policies.^{3/} As wireless offerings begin to compete directly with landline services in an increasing number of markets and on a much broader scale, it is critical that the federal universal service scheme embrace alternative services and service providers. The Commission's rules should offer wireless carriers a meaningful opportunity to meet the telecommunications and advanced service needs of the American public by confirming their eligibility to receive federal universal service funds.

Wireless providers are well-suited to provide universal service in rural communities and areas that traditionally have been identified as "high cost." Many rural and high cost

^{3/} See *Recommended Decision* at ¶ 23 ("Competitive neutrality is . . . embodied in Section 254(e)'s requirement that universal service support be explicit, Section 254(f)'s requirement that state universal service contributions be equitable and nondiscriminatory and Section 214(e)'s requirement that *any* carrier can be an eligible telecommunications carrier provided it meets certain statutory criteria.") (emphasis added).

communities currently lack the infrastructure required for service providers to offer core telecommunications services and advanced services to the nation's most isolated regions. Moreover, the costs of making wired infrastructure available in remote areas of the country in the near future remain prohibitively high, potentially resulting in a society of haves and have-nots.^{4/} Wireless providers can directly address this historic inequity. They can offer core services in high cost areas at affordable rates and can provide low-cost advanced services to schools, libraries and health care providers.

Vanguard already offers fixed services in remote areas of the country where landline phone service cannot be efficiently provided. For instance, Vanguard provides some fixed services to residential consumers in the Ohio Valley region where extreme terrain prevents the economic delivery of wireline service. Vanguard also provides fixed services to the Pennsylvania Park Service to connect fire watch towers located in extremely remote areas in the Pocono Mountains. Similarly, wireless Local Area Networks ("LANs"), wireless PBX services, wireless Internet capabilities and related functions can provide an efficient and cost-effective alternative to landline systems and service offerings. Often, wireless services can offer functionalities, such as mobility, that are not normally available with wired services. The Commission's rules, therefore, should be designed to make universal service support available to wireless providers and other non-traditional service providers.

^{4/} Indeed, it was this discrepancy that led Congress to adopt the universal service provisions of the Telecommunications Act of 1996. See 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including . . . those in rural, insular and high cost areas, should have access to telecommunications and information services, . . . that are reasonably comparable to those services provided in urban areas. . .").

III. The Definition of Service Areas Adopted by the Commission Should Not Have the Effect of Denying Wireless Providers Universal Service Eligibility.

Section 254(e) of the Communications Act, as amended, provides that, after the effective date of the Commission's regulations implementing Section 254, "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support."^{5/} Moreover, the Joint Board explicitly recommends that the Commission provide that any telecommunications carrier that meets the eligibility criteria of Section 214(e)(1) (*e.g.*, offers and advertises universal services throughout the "service area") should be eligible for universal service support.^{6/} Consistent with this recommendation, Vanguard urges the Commission to define "service area" in a manner that does not inadvertently exclude wireless carriers from the benefits of the Commission's universal service support mechanisms.

The Joint Board has recommended, as an initial matter, that the Commission define "service areas," for areas served by rural telephone companies, as the incumbent rural telephone companies' current study area.^{7/} The study areas of many rural telephone companies, however, are non-contiguous and many cover geographically distinct areas. Should the entire service area of a rural LEC be used as the benchmark for determining universal service eligibility, many newly-established and emerging service providers, as well as existing Commercial Mobile Radio Service ("CMRS") providers, may find themselves excluded from obtaining universal service

^{5/} See 47 U.S.C. § 254(e).

^{6/} See *Recommended Decision* at ¶ 155.

^{7/} See *Recommended Decision* at ¶ 167.

support because of their limited geographic coverage. Because wireless carriers are licensed within prescribed geographic regions, mandating that these companies serve larger, and potentially dispersed areas, will ensure that only incumbent LECs are provided the benefits of federal universal service mechanisms.

The Joint Board expressly recognized the potential for this exclusion, in part, by recommending that the states, in cooperation with the Commission, establish relatively small service area definitions for determining universal service eligibility in areas not served by rural telephone companies. As the Joint Board explained:

[a]n unreasonably large area may deter entry because fewer competitors may be able to cover start-up costs that increase as the size of the area they must serve increases. This would be especially true if the states adopt as the service area the existing study areas of larger local exchange companies, such as the BOCs, which usually include most of the geographic area of a state, urban as well as rural.^{8/}

The same analysis applies to the service area definition for areas where rural telephone companies provide service. Adopting the Joint Board's recommendation for rural areas would inhibit competition and disadvantage new entrants and wireless providers whenever a rural LEC serves distinct and non-contiguous areas.

Accordingly, where a rural telephone company's study area is non-contiguous and covers discrete regions within a state, the Commission should define the universal service "service area" as the contiguous portions of the rural telephone companies study area, or alternatively, the areas in which the particular carrier proposes to provide service, *e.g.*, a new entrant's telephone

^{8/} See *Recommended Decision* at ¶ 176.

franchise area or a wireless company's service area.^{9/} The statute expressly recognizes that, in certain circumstances, the rural telephone company study area is an inappropriate benchmark for determining eligibility.^{10/} Accordingly, where a study area encompasses non-contiguous geographic areas, the Commission must recognize the potential for competitive harm and provide for an alternative definition for determining universal service support eligibility.

IV. The Commission's Rules Must Be Flexible But Guard Against Abuse of Federal Universal Service Mechanisms.

As the Joint Board recognized, partnerships among schools, libraries, health care providers and their communities are important to the dissemination of information, access to distant resources and the ability of these entities to negotiate lower rates and secure operational efficiencies.^{11/} Accordingly, the Commission's rules must not discourage cooperation between schools, libraries and health care providers and private networks that enhances the educational opportunities of our nation's students.

It is critical, however, that the Commission's universal service rules also include safeguards against potential abuse. Federal rules must ensure that parties not eligible for universal service support do not use communications services and facilities made available

^{9/} The Joint Board has recommended a comparable "geographic area" definition to be applied in determining eligibility for financial support for the provision of universal service to schools, libraries and health care providers. *See generally Recommended Decision* at ¶ 543 ("using an expansive definition of geographic areas might be unfair to a small telephone company serving a single community, . . . for such a definition would permit it to be compelled to serve other schools outside its geographic market").

^{10/} *See* 47 U.S.C. § 214(e)(5) (providing that the relevant service area is the rural telephone company's study area "unless and until the Commission and the states . . . establish a different service area for [the] company").

^{11/} *See Recommended Decision* at ¶¶ 594-96.

through universal service mechanisms for purposes unrelated to the Commission's universal service goals.^{12/} Specifically, the Commission must prevent entities cooperating or collaborating with schools and libraries from using subsidized communications services or facilities for their own purposes or in a manner that does not directly benefit universal service eligibles. The Commission also should prohibit arrangements that permit entities other than the eligible institution and people directly participating in eligible programs from benefitting from universal service funds.^{13/}

Permitting unrestrained or unchecked use of communications networks financed by universal service subsidies will increase the costs of establishing and maintaining those networks, which will increase subsidy needs and potentially increase the size of the universal service fund to a point where carrier contributions simply become too high. Conversely, if the funds available to eligible institutions are limited, permitting non-eligible parties to use subsidized services could prevent eligible entities from obtaining the resources that Congress intended. To prevent such abuse, the Commission must require certifications from universal service recipients confirming that subsidized services or functionalities are being used only as permitted by the Commission's rules. Moreover, the Commission must establish a means of

^{12/} See e.g. *Recommended Decision* at ¶ 594 ("The difficulty is . . . how to allow eligible institutions to aggregate their demand with ineligible entities without permitting the former to extend their discount privileges illegally.").

^{13/} Abuses can take many forms. For instance, Vanguard long has provided free calls to 911. In one of its markets, public safety employees used this service to call the 911 dispatcher, who then connected their personal, non-emergency calls. While Vanguard eventually learned of this practice and corrected it, significant resources — both public and private — were expended as a result of this abuse.

policing use of subsidized services, such as random audits, to ensure continued compliance with the Commission's rules and the goals of the Telecommunications Act.

Finally, to ensure that consumers are aware of the charges imposed upon them based on a carrier's universal service obligations, the Commission's rules should permit carriers to reflect such charges on a separate line of the bill. Many carriers already include similar line items for 911 taxes and telecommunications relay service obligations. Moreover, reflecting this information on the bill will reduce consumer billing confusion and promote the free flow of information between contracting parties.

V. Conclusion

The Commission's universal service rules should promote competition and provide the targeted beneficiaries of universal service support maximum flexibility to choose the services, service providers, and technologies that best suit their needs. At the same time, the rules should

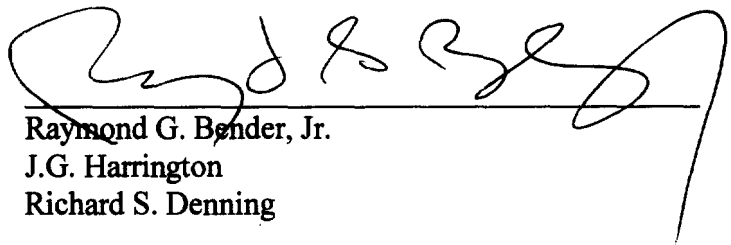
ensure that customers have access to telecommunications and advanced services at affordable rates without establishing a complicated federal framework subject to manipulation and abuse. Vanguard's proposals are designed to achieve those goals.

For all these reasons, Vanguard Cellular Systems, Inc. respectfully requests that the Commission adopt rules that are consistent with the proposals identified herein.

Respectfully submitted,

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